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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,037	02/08/2002	Brent E. Logan	4527-103.1 US	3613

7590

12/11/2002

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EXAMINER

HARRIS, CHANDA L

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 12/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,037

Applicant(s)

LOGAN, BRENT E.

Examiner

Chanda L. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/15/02 and 10/21/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15, 17-20 and 32-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-15, 17-20 and 32-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Status of Claims

In response to the Amendment filed on 10/21/02, Claims 12-15, 17-20 and 32-40 are pending.

Information Disclosure Statement

The information disclosure statement, particularly regarding patent FR 2399-255 filed 7/9/02 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-15, 17-20, and 32-40 are rejected under 35 U.S.C. 102(b) as being anticipated by John et al. (US 3,799,146).

1. [Claims 12, 17-18, 32-33, 36-38]: Regarding Claims 12, 17-18, 32-33, and 36-38, John teaches a method and means for determining a pattern of sonic variations, said

pattern comprising a plurality of sequence of tones. See Col.1: 40-43. John teaches transmitting each of said sequences of tones in soundwave form to an infant (e.g. premature baby, postnatal human) and others, during a predetermined period. See Abstract. John also teaches wherein a tempo at which each subsequent said sequence of tones is repeated is selected to be increased at a predetermined time during the predetermined period. See Col.3: 19-20 and Col.7: 50-63. John does not teach thereby adjusting cognitive function of the postnatal human or improving the cognitive function of the premature baby. However, because John teaches the other aforementioned claimed limitations resulting in adjusting cognitive function of the postnatal human or improving the cognitive function of the premature baby, John's invention inherently results in adjusting cognitive function of the postnatal human or improving the cognitive function of a premature baby.

2. [Claims 13,18, 33]: Regarding Claims 13, 18 and 33, John discloses in Col.3: 18-19 and Col.9: 12-20 wherein the tones in the pattern of sonic variations are a baseline tone or a tonal variation from the baseline tone in which subsequent sequences increase or decrease in tempo. With regards to Claim 36 and 43, John also discloses a means for positioning a transmission means proximate to a forehead of said human (e.g. earphones) and transmitting said sequence of tones aurally. See Col.1: 51-54.

3. [Claims 14, 19, 34 and 39]: Regarding Claims 14, 19, 34 and 39, John discloses storing a pattern of sonic variations in an electronic integrated circuit. See Col.1: 47-50.

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4. [Claims 15, 20, 35, 40]: Regarding Claims 15, 20, 35 and 40, John discloses transmitting a stored plurality of patterns from an electronic integrated circuit to a premature baby with a sonic transducer. See Col.1: 50-53.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-15, 17-20, and 32-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over John et al.

5. [Claims 12, 17-18, 32-33, 36-38]: Regarding Claims 12,17-18, 32-33, and 36-38, John teaches a method and means for determining a pattern of sonic variations, said pattern comprising a plurality of sequence of tones. See Col.1: 40-43. John teaches transmitting each of said sequences of tones in soundwave form to an infant (e.g. premature baby, postnatal human) and others, during a predetermined period. See Abstract. John also teaches wherein a tempo at which each subsequent said sequence of tones is repeated is selected to be increased at a predetermined time during the predetermined period. See Col.3: 19-20 and Col.7: 50-63.

John does not teach expressly thereby adjusting cognitive function of the postnatal human or improving the cognitive function of the premature baby. However, it would have been obvious to one of ordinary skill in the art at the time of the invention

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that because John teaches the other cited limitations of the claims listed above, John consequently teaches adjusting cognitive function of the postnatal human or improving the cognitive function of a premature baby.

6. [Claims 13, 18, 33]: Regarding Claims 13, 18 and 33, John discloses in Col.3: 18-19 and Col.9: 12-20 wherein the tones in the pattern of sonic variations are a baseline tone or a tonal variation from the baseline tone in which subsequent sequences increase or decrease in tempo. With regards to Claim 36 and 43, John also discloses a means for positioning a transmission means proximate to a forehead of said human (e.g. earphones) and transmitting said sequence of tones aurally. See Col.1: 51-54.

7. [Claims 14, 19, 34 and 39]: Regarding Claims 14, 19, 34 and 39, John discloses storing a pattern of sonic variations in an electronic integrated circuit. See Col.1: 47-50.

[Claims 15, 20, 35, 40]: Regarding Claims 15, 20, 35 and 40, John discloses transmitting a stored plurality of patterns from an electronic integrated circuit to a premature baby with a sonic transducer. See Col.1: 50-53.

Response to Arguments

Applicant's arguments filed 10/21/02 have been fully considered but they are not persuasive. See rejections above. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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December 9, 2002


S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700